

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2015

CORAM

THE HON'BLE MR. JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MS. JUSTICE K.B.K.VASUKI

C.M.A. No.857 of 2015
and M.P.No.1 of 2015

The Managing Director
Tamil Nadu State Transport
Corporation (Kumbakonam) Limited
Periya Melakuparai
Trichirapalli- 620 001. Appellant/Respondent

vs.

Kathiresan Respondent/Petitioner

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 27.2.2014 made in MCOP.No.213 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Perambalur.

For Appellant : Mr.D.Venkatachalam
For Respondent : Mr.T.Gopinath for Royan Law Associates

J U D G M E N T

(Order was delivered by K.B.K.VASUKI, J.)

Tamil Nadu State Transport Corporation, who is the respondent in the claim petition, is the appellant herein. The claim petition was filed by the injured in the road accident occurred on 3.1.2013, claiming a consolidated sum of Rs.30,00,000/- as compensation.

2.The factum of the accident involvement of the two wheeler vehicle bearing Regn.No.TN 48 Y 5100 having the claimant as pillion rider and the bus belonging to the Transport Corporation in the accident and the fact that the claimant sustained multiple injuries and fracture in the same are not denied.

3.The specific case of the claimant in his claim petition is that in the accident, he sustained multiple grievous injuries all over his body including crush injury on his right lower leg and fracture above wrist of his left hand and grievous injuries over the shin of left leg and other injuries and was immediately taken to the Government Hospital, Musiri for first aid and thereafter admitted as

inpatient at Maruti Hospital, Tiruchirapalli between 3.1.2013 and 17.1.2013, where his right lower leg under knee portion was amputated and he has been continuously under treatment as outpatient and is bedridden and is unable to walk due to amputation. It is the further case of the claimant that he spent huge sum towards medical expenses and is likely to bear future medical bills and expenses. The same was substantiated through the oral evidence of PW1/claimant and PW2/doctor, who examined him for his disability and through documentary evidence i.e., Ex.P2 discharge summary issued by Maruti Hospital, Ex.P3 medical bills for Rs.83,112/-, Ex.P4 medical prescription, Ex.P7 bills for Rs.18,886/- towards transportation, Ex.P8 photo and CD relating to the claimant's disability and Ex.P9 disability certificate issued by PW2 doctor. The genuineness and credit worthiness of the same are not at all denied by the Transport Corporation.

4.The claimant, on the date of the accident, was aged about 47 years and was working as Special Grade Foreman in Tamil Nadu Electricity Board, Trichy and earning the monthly salary of Rs.41,107/- and he is allowed to continue in the same employment after the occurrence. According to the claimant, even after the treatment past and present, his normalcy is not restored and due to the injuries and disability sustained by him in the accident, the future prospects of promotion to higher post and his other enjoyment in life are seriously affected.

5.The Motor Accident Claims Tribunal, after due appreciation and analysis of the entire evidence adduced on the side of the claimant, awarded a sum of Rs.14,63,112/- as compensation under the following heads:

(1)Pain and suffering	Rs.2,00,000/-
(2)Extra nourishment	Rs. 20,000/-
(3)Permanent disability	Rs.7,00,000/-
(4)Loss of amenities and inconvenience	Rs.2,00,000/-
(5)Medical expenses	Rs. 83,112/-
(6)Transportation expenses	Rs.10,000/-
(7)Attendant expenses	Rs.1,00,000/-
(8)Fixation of Artificial leg	Rs.1,50,000/-
	Rs.14,63,112/-

Challenging the quantum of compensation awarded by the Tribunal, Tamil Nadu State Transport Corporation is now before this Court.

6.The appellant Transport Corporation has in this appeal not raised serious objection regarding the award of compensation and quantum of compensation under the heads 1, 2, 3, 5, 6 and 8, but raised serious objection against the award of compensation and quantum of compensation under two heads viz., Rs.2,00,000/- towards loss of amenities and inconvenience and Rs.1,00,000/- towards attendant expenses. The learned counsel for the appellant has, by relying on the judgment of this Court reported in 2011 (1) TNMAC page 208 (The Branch Manager, National Insurance Company Limited,

Pudukottai v. A.P.Maha Bharathi and others), contended before this court that the Tribunal, while awarding Rs.7,00,000/- for permanent disability sustained by the claimant due to amputation of his right leg, ought not to have awarded separate compensation under the head 'loss of amenities and inconvenience' and the compensation of Rs.7,00,000/- awarded under the head 'permanent disability' includes the compensation under other heads and the award of separate compensation is hence not legally permissible. The learned counsel for the appellant would also question the correctness of the award of compensation of Rs.1,00,000/- towards attendant expenses, which is according to him, not actually incurred.

7.We find, the argument so advanced on the side of the appellant deserves merits and acceptance. As rightly argued by the learned counsel for the appellant, lump sum compensation of Rs.7,00,000/- awarded under the head 'permanent disability' covers not only the disability aspect, but also other loss of amenities and enjoyment sustained by the claimant due to the same. As such, the compensation of Rs.7,00,000/- awarded under the head 'permanent disability' appears to be fair and reasonable. While confirming the same, the compensation awarded under other head loss of amenities and inconvenience and is liable to be set aside.

8.Regarding the compensation awarded towards attendant expenses, it is nobody's case that an Attender is either engaged or going to be engaged to look after the injured claimant, while he was hospitalised or during his illness period or future. If that is so, no compensation is required to be awarded for the expenses incurred or going to be incurred. As such, the compensation awarded under this head appears to be unjust and unreasonable and the same stands set aside. Except the above modification, the award of compensation stands confirmed in other respects.

9.In the result, the award dated 27.02.2014 made in MCOP.No.213 of 2013 by the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Perambalur stands restricted to Rs.11,63,112/- with interest at 7.5% p.a. from the date of claim petition till payment. The appellant Transport Corporation is directed to deposit the modified award amount with interest within a period of 8 weeks from the date of receipt of the copy of this order. On such deposit, the claimant is permitted to withdraw the same on due application. The Civil Miscellaneous Appeal is accordingly disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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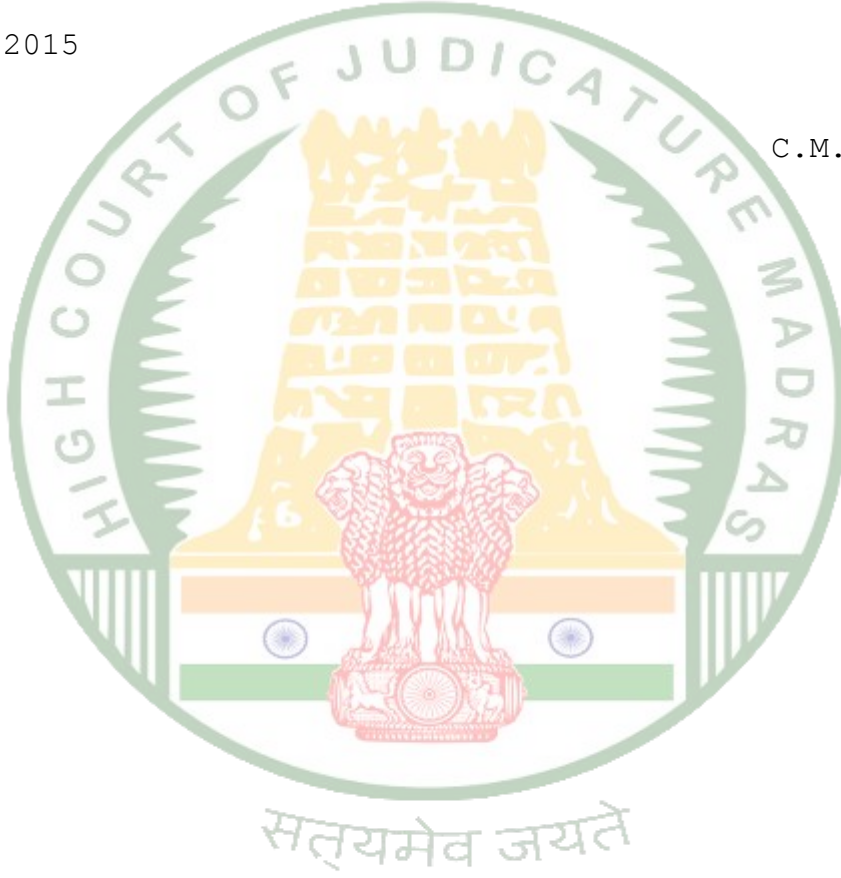
To

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Perambalur.

+ 1 cc to M/s. Royan Law Associates, Advocate SR.21661
+ 1 cc to Mr.D.Venkatachalam, Advocate SR.21644

PA(CO)
EU 05.06.2015

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